HUSBAND AND WIFE—NECESSARIES—MERCHANDISE FURNISHED ON THE WIFE'S CREDIT.—Necessaries were supplied to the wife on her own credit. The merchant, unable to collect from the wife, sues the husband at law. *Held,* the husband is not liable. *Wickstrom* v. *Peck* (App. Div. 1st Dep't. 1917) 167 N. Y. Supp. 408.

It seems to be well recognized that the so-called "imputed agency" of the wife for the purchase of necessaries is not a real agency, and that the resulting relationship between the husband and the merchant is not one of contract. See *Bergh* v. *Warner* (1891) 47 Minn. 250, 50 N. W. 77; Spencer, Domestic Relations § 121; 9 Columbia Law Rev. 72. Nothing is gained by calling the liability quasi-contractual, but it is sufficient to state that it is one imposed on the husband by law because the courts have thought that public policy demanded that he be so liable. It is very clear that such liability was worked out through the fiction of an agency, and the doctrine of the principal case is a natural result once the agency theory has been established. If the wife did not presume to act for the husband the fiction would not prove adequate, excluding the principles of undisclosed principal. The principal case represents the great weight of authority. *Byrnes* v. *Rayner* (1895) 84 Hun 199, 32 N. Y. Supp. 542; *Gafford* v. *Dunham* (1895) 111 Ala. 551, 20 So. 346; see *Noel* v. *O'Neill* (1916) 128 Md. 202, 97 Atl. 513; *contra, Edminston* v. *Smith* (1907) 13 Idaho 645, 92 Pac. 842. Many of the cases refer to two early English decisions, *Metcalfe* v. *Shaw* (1811) 3 Campbell 22; *Bentley* v. *Griffin* (1814) 5 Taunton 356, as of great authority; but neither is a precedent, for the former was decided on the ground that the husband was not liable on a promissory note signed by the wife, and in the latter the goods were not necessaries. As the principles of contract and agency have no application, there would seem to be nothing illogical about making the husband directly liable. In those jurisdictions which allow the wife an action against the husband for money that she herself has been forced to expend for necessaries, *De Brauwere* v. *De Brauwere* (1911) 203 N. Y. 460, 96 N. E. 722; *Rogers* v. *Rogers* (1914) 93 Kan. 114, 143 Pac. 410, a direct action against the husband is only a short-cut which imposes no greater liability upon him. In explaining the direct liability of an undisclosed principal, where it was shown that the third party could sue the agent and the agent the principal, it has been said "nothing but more or less technical rules of procedure would seem to stand in the way of". Mechem, Agency (2nd ed.) § 1729. The policy of modern legislation, to make both husband and wife liable for family expenses regardless of the question as to whose credit was pledged, see Ill. Stat. Ann. § 6152; Iowa Code § 3165; Lord's Ore. Laws § 7039, should induce the courts to adopt a less technical attitude.

INSURANCE—INTOXICATING LIQUORS—LEGALITY OF CONTRACT.—In a suit on a policy of fire insurance on a stock of intoxicating liquors which required the liquors to be kept in a "building occupied for mercantile purposes", it being unlawful to sell liquors, *held,* the policy was void. *Wood* v. *First Nat'l. Fire Ins. Co.* (Ga. 1917) 94 S. E. 622.

The statement is sometimes found that a policy of insurance on a stock of liquors illegally kept for sale is valid, see Elliott, Insurance 14, but this statement requires some modification. It is true that if a contract of insurance be valid in its inception, it is not avoided by subsequent illegal acts. *Insurance Co. of North America* v. *Evans* (1902) 64 Kan. 770, 68 Pac. 623; *Hinckley* v. *Germania Fire Ins. Co.*

(1885) 140 Mass. 38, 1 N. E. 737. Furtherfore, when the goods insured are capable of legitimate use, the fact they are used for an illegal purpose will not avoid the policy. *Erb* v. *German-American Ins. Co.* (1896) 98 Iowa 606, 67 N. W. 583; see *Insurance Co. of North America* v. *Evans,* supra; but *cf. Johnson* v. *Union Marine Ins. Co.* (1879) 127 Mass. 555. But the foregoing cases must be distinguished from those in which the policy has been declared void either because it was a necessary condition of the policy that an illegal act be performed, see *Niagara Fire Ins. Co.* v. *De Graff* (1863) 12 Mich. 124; *Erb* v. *German-American Ins. Co., supra,* or because the contract was entered into for the direct purpose of protecting an illegal traffic. *Mount* v. *Waite* (N. Y. 1811) 7 Johns. 434; *Russell* v. *De Grand* (1818) 15 Mass. 35. The failure to distinguish between insurance on the property and insurance on the business has led some courts to declare the contract void in all cases. *Kelly* v. *Home Ins. Co.* (1867) 97 Mass. 288; *Johnson* v. *Marine Ins. Co., supra.* The court in the principal case evidently considered this policy as being on the business and accordingly refused to allow the insured to recover.

INSURANCE—LIABILITY INSURANCE—EXERCISE OF INSURER'S RIGHT TO DEFEND OR SETTLE.—The plaintiff was insured by the defendant to the extent of $5,000 against liability from accidents resulting from the operation of an automobile. The defendant had the exclusive right to defend or settle all actions arising out of such accidents. A third party, who had been struck by the plaintiff's automobile, offered to compromise for $3,150 which the defendant refused to pay unless the plaintiff contributed $750. The plaintiff paid the $750 for which this action is brought. *Held,* he could not recover. *Levin* v. *New England Casualty Co.* (1917) 101 Misc. 402, 166 N. Y. Supp. 1055.

An action may be maintained to recover money paid under duress provided the retention of the benefit therefrom is unconscionable. Woodward, Quasi-Contracts § 211. Assuming that the insurer acted in bad faith, the facts of the principal case would seem to afford sufficient evidence of coercion. *Cf. Brown & McCabe* v. *London, etc. Co.* (D. C. 1915) 232 Fed. 298. However, in order to determine whether the insurer is acting unconscionably, it is necessary to inquire into the nature of its relationship to the insured. An insurer against claims of third parties is ordinarily given the exclusive right to defend or settle such claims, 16 Columbia Law Rev. 605, in order to minimize its liability under the policy. See *Connolly* v. *Bolster* (1905) 187 Mass. 266, 72 N. E. 981. As against third parties, it may exercise this right for its own benefit, even though in so doing the interests of the insured be prejudiced, *New Orleans, etc. R. R.* v. *Maryland Casualty Co.* (1905) 114 La. 153, 38 So. 89, since the right is given on the understanding that it be so exercised. See *Davidson* v. *Maryland Casualty Co.* (1908) 197 Mass. 167, 83 N. E. 407. But, inasmuch as the insurer must exercise its authority to defend or settle with due care, *Attlebora Mfg. Co.* v. *Frankfort, etc. Co.* (C. C. 1907) 171 Fed. 495, and in good faith, *Brassil* v. *Maryland Casualty Co.* (1914) 210 N. Y. 235, 104 N. E. 622; *Brunswick Realty Co.* v. *Frankfort Ins. Co.* (1917) 99 Misc. 639, 166 N. Y. Supp. 36; see *New Orleans, etc. R. R.* v. *Maryland Casualty Co. supra,* it would seem there is a confidential relationship between the insured and the insurer. Therefore, the insurer is acting unconscionably if it deliberately uses as a means of offense against the insured an authority intended to be asserted protectively